

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 990

Introduced by Wehrbein, 2; Baker, 44; Connealy, 16; Erdman, 47;
Fischer, 43; Hudkins, 21; Kremer, 34; Langemeier, 23;
Raikes, 25; Schrock, 38; Stuhr, 24; Stuthman, 22

Read first time January 9, 2006

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Rural Development
2 Act; to amend sections 77-27,188.02 and 77-27,189,
3 Reissue Revised Statutes of Nebraska, and sections
4 77-27,187.01, 77-27,187.02, 77-27,188, and 77-27,195,
5 Revised Statutes Supplement, 2005; to provide a tax
6 credit for livestock modernization or expansion as
7 prescribed; to harmonize provisions; and to repeal the
8 original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-27,187.01, Revised Statutes
2 Supplement, 2005, is amended to read:

3 77-27,187.01 For purposes of the Nebraska Advantage Rural
4 Development Act, unless the context otherwise requires:

5 (1) Any term has the same meaning as used in the Nebraska
6 Revenue Act of 1967;

7 (2) Equivalent Nebraska employees means the number of
8 Nebraska employees computed by dividing the total hours paid in a
9 year to Nebraska employees by the product of forty times the number
10 of weeks in a year;

11 (3) Livestock modernization or expansion means the
12 construction, improvement, or acquisition of buildings, facilities,
13 or equipment for livestock housing, confinement, feeding,
14 production, and waste management;

15 (4) Livestock production has the same meaning as in
16 section 77-5203;

17 ~~(3)~~ (5) Nebraska employee means an individual who is
18 either a resident or partial-year resident of Nebraska;

19 ~~(4)~~ (6) Qualified employee leasing company means a
20 company which places all employees of a client-lessee on its
21 payroll and leases such employees to the client-lessee on an
22 ongoing basis for a fee and, by written agreement between the
23 employee leasing company and a client-lessee, grants to the
24 client-lessee input into the hiring and firing of the employees
25 leased to the client-lessee;

1 ~~(5)~~ (7) Related taxpayers includes any corporations that
2 are part of a unitary business under the Nebraska Revenue Act of
3 1967 but are not part of the same corporate taxpayer, any business
4 entities that are not corporations but which would be a part of
5 the unitary business if they were corporations, and any business
6 entities if at least fifty percent of such entities are owned by
7 the same persons or related taxpayers and family members as defined
8 in the ownership attribution rules of the Internal Revenue Code of
9 1986, as amended;

10 ~~(6)~~ (8) Taxpayer means a corporate taxpayer or other
11 person subject to either an income tax imposed by the Nebraska
12 Revenue Act of 1967 or a franchise tax under Chapter 77,
13 article 38, or a partnership, limited liability company, subchapter
14 S corporation, or joint venture when all of the partners,
15 shareholders, or members are subject to or exempt from such
16 taxes; and

17 ~~(7)~~ (9) Year means the taxable year of the taxpayer.

18 Sec. 2. Section 77-27,187.02, Revised Statutes
19 Supplement, 2005, is amended to read:

20 77-27,187.02 (1) ~~For tax years beginning or deemed to~~
21 ~~begin on or after January 1, 2004, under the Internal Revenue Code~~
22 ~~of 1986, as amended, in order to~~ To earn the incentives set forth
23 in the Nebraska Advantage Rural Development Act, the taxpayer shall
24 file an application for an agreement with the Tax Commissioner.

25 (2) The application shall contain:

1 (a) A written statement describing the full expected
2 employment or type of livestock production and the investment
3 amount for a qualified business, as described in section 77-27,189,
4 in this state;

5 (b) Sufficient documents, plans, and specifications as
6 required by the Tax Commissioner to support the plan and to define
7 a project; and

8 (c) An application fee of five hundred dollars. The fee
9 shall be remitted to the State Treasurer for credit to the Nebraska
10 Advantage Rural Development Fund, which fund is hereby created. Any
11 money in the fund available for investment shall be invested by the
12 state investment officer pursuant to the Nebraska Capital Expansion
13 Act and the Nebraska State Funds Investment Act. The application
14 and all supporting information shall be confidential except for the
15 name of the taxpayer, the location of the project, and the amounts
16 of increased employment and or investment.

17 ~~(3) Once satisfied that the plan in the application~~
18 ~~defines a project that meets the investment, employment, and wage~~
19 ~~requirements and is located in an eligible county or enterprise~~
20 ~~zone, and that these requirements will be reached within the~~
21 ~~required time period, the (3)(a) The Tax Commissioner shall approve~~
22 the application and authorize the total amount of credits expected
23 to be earned as a result of the project- if he or she is satisfied
24 that the plan in the application defines a project that (i)
25 meets the requirements established in section 77-27,188 and such

1 requirements will be reached within the required time period, and
2 (ii) for projects other than livestock modernization or expansion
3 projects, is located in an eligible county or enterprise zone.

4 **(b)** The Tax Commissioner shall not approve further
5 applications once the expected credits from the approved projects
6 total two million five hundred thousand dollars in each of fiscal
7 years 2004-05 and 2005-06 and three million dollars in fiscal
8 year 2006-07 and each fiscal year thereafter. Four hundred dollars
9 of the application fee shall be refunded to the applicant if
10 the application is not approved because the expected credits from
11 approved projects exceed such amounts.

12 **(c)** Applications for benefits shall be considered in the
13 order in which they are received.

14 **(4)** After approval, the taxpayer and the Tax Commissioner
15 shall enter into a written agreement. The taxpayer shall agree
16 to complete the project, and the Tax Commissioner, on behalf of
17 the State of Nebraska, shall designate the approved plans of the
18 taxpayer as a project and, in consideration of the taxpayer's
19 agreement, agree to allow the taxpayer to use the incentives
20 contained in the Nebraska Advantage Rural Development Act up to
21 the total amount that were authorized by the Tax Commissioner
22 at the time of approval. The application, and all supporting
23 documentation, to the extent approved, shall be considered a part
24 of the agreement. The agreement shall state:

25 **(a)** The levels of employment and investment required by

1 the act for the project;

2 (b) The time period under the act in which the required
3 level must be met;

4 (c) The documentation the taxpayer will need to supply
5 when claiming an incentive under the act;

6 (d) The date the application was filed; and

7 (e) The maximum amount of credits authorized.

8 Sec. 3. Section 77-27,188, Revised Statutes Supplement,
9 2005, is amended to read:

10 77-27,188 (1) A refundable credit against the taxes
11 imposed by the Nebraska Revenue Act of 1967 shall be allowed to
12 any taxpayer who has an approved application under the Nebraska
13 Advantage Rural Development Act, who is engaged in a qualifying
14 business as described in section 77-27,189, and who after January
15 1, 2006:

16 (a)(i) Increases employment by two new equivalent
17 Nebraska employees and makes an increased investment of at least
18 one hundred twenty-five thousand dollars prior to the end of the
19 first taxable year after the year in which the application was
20 submitted in any county in this state with a population of less
21 than fifteen thousand inhabitants, according to the most recent
22 federal decennial census, or in any designated enterprise zone
23 pursuant to 42 U.S.C. 11501 or the Enterprise Zone Act; or

24 (ii) Increases employment by five new equivalent Nebraska
25 employees and makes an increased investment of at least two hundred

1 fifty thousand dollars prior to the end of the first taxable year
2 after the year in which the application was submitted in any county
3 in this state with a population of less than twenty-five thousand
4 inhabitants, according to the most recent federal decennial census;
5 and

6 (b) Pays a minimum qualifying wage of eight dollars and
7 twenty-five cents per hour to the new equivalent Nebraska employees
8 for which tax credits are sought under the Nebraska Advantage Rural
9 Development Act. The Department of Revenue shall adjust the minimum
10 qualifying wages required for applications filed after January 1,
11 2004, and each January 1 thereafter, as follows: The current rural
12 Nebraska average weekly wage shall be divided by the rural Nebraska
13 average weekly wage for 2003; and the result shall be multiplied by
14 the eight dollars and twenty-five cents minimum qualifying wage for
15 2003 and rounded to the nearest one cent. The amount of increase
16 or decrease in the minimum qualifying wages for any year shall
17 be the cumulative change in the rural Nebraska average weekly
18 wage since 2003. For purposes of this subsection, rural Nebraska
19 average weekly wage means the most recent average weekly wage paid
20 by all employers in all counties with a population of less than
21 twenty-five thousand inhabitants as reported by October 1 by the
22 Department of Labor.

23 For purposes of this section, a teleworker working in
24 Nebraska from his or her residence for a taxpayer shall be
25 considered an employee of the taxpayer, and property of the

1 taxpayer provided to the teleworker working in Nebraska from his
2 or her residence shall be considered an investment. Teleworker
3 includes an individual working on a per-item basis and an
4 independent contractor working for the taxpayer so long as the
5 taxpayer withholds Nebraska income tax from wages or other payments
6 made to such teleworker. For purposes of calculating the number of
7 new equivalent Nebraska employees when the teleworkers are paid on
8 a per-item basis or are independent contractors, the total wages
9 or payments made to all such new employees during the year shall
10 be divided by the qualifying wage as determined in subdivision (b)
11 of this subsection, with the result divided by two thousand eighty
12 hours.

13 (2) A refundable credit against the taxes imposed by the
14 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who
15 (a) has an approved application under the Nebraska Advantage Rural
16 Development Act, (b) is engaged in livestock production, and (c)
17 after January 1, 2007, invests at least fifty thousand dollars for
18 livestock modernization or expansion.

19 ~~(2)~~ (3) The amount of the credit allowed under subsection
20 (1) of this section shall be three thousand dollars for each new
21 equivalent Nebraska employee and two thousand seven hundred fifty
22 dollars for each fifty thousand dollars of increased investment.
23 The amount of the credit allowed under subsection (2) of this
24 section shall be ten percent of each fifty thousand dollars of
25 investment. For each application, a taxpayer engaged in livestock

1 production may qualify for a credit under either subsection (1) or
2 (2) of this section, but cannot qualify for more than one credit
3 per application.

4 ~~(3)~~ (4) An employee of a qualified employee leasing
5 company shall be considered to be an employee of the client-lessee
6 for purposes of this section if the employee performs services for
7 the client-lessee. A qualified employee leasing company shall
8 provide the Department of Revenue access to the records of
9 employees leased to the client-lessee.

10 ~~(4)~~ (5) The credit shall not exceed the amounts set out
11 in the application and approved by the Tax Commissioner.

12 ~~(5)(a)~~ (6)(a) If a taxpayer who receives tax credits
13 creates fewer jobs or less investment than ~~approved~~ required in
14 the project agreement, the taxpayer shall repay the tax credits as
15 provided in this subsection.

16 (b) If less than seventy-five percent of the ~~proposed~~
17 required jobs in the project agreement are created, one hundred
18 percent of the job creation tax credits shall be repaid. If
19 seventy-five percent or more of the ~~proposed~~ required jobs in the
20 project agreement are created, no repayment of the job creation tax
21 credits is necessary.

22 (c) If less than seventy-five percent of the ~~proposed~~
23 required investment in the project agreement is created, one
24 hundred percent of the investment tax credits shall be repaid. If
25 seventy-five percent or more of the ~~proposed~~ required investment in

1 the project agreement is created, no repayment of the investment
2 tax credits is necessary.

3 ~~(6)~~ (7) For taxpayers who submitted applications for
4 benefits under the Nebraska Advantage Rural Development Act before
5 January 1, 2006, subsection (1) of this section, as such subsection
6 existed immediately prior to such date, shall continue to apply to
7 such taxpayers. The changes made by Laws 2005, LB 312, shall not
8 preclude a taxpayer from receiving the tax incentives earned prior
9 to January 1, 2006.

10 Sec. 4. Section 77-27,188.02, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-27,188.02 If the taxpayer does not maintain the
13 increases in the level of investment and employment described
14 in subsection (1) of section 77-27,188 to create a credit for at
15 least three years after the year for which the credit was first
16 allowed, the taxpayer shall lose all used and unused credits. The
17 taxpayer shall repay to the state the amount of the used credits
18 within one year after the failure to maintain such investment and
19 employment.

20 Sec. 5. Section 77-27,189, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-27,189 (1) A qualified business means any business
23 engaged in:

24 (a) Storage, the ~~storage,~~ warehousing, distribution,
25 transportation, or sale of tangible personal property; ~~or in~~

1 ~~any of the following activities:~~

2 (b) Livestock production;

3 ~~(a) The conducting of~~ (c) Conducting research,
4 development, or testing for scientific, agricultural, animal
5 husbandry, food product, or industrial purposes;

6 ~~(b) The performance of~~ (d) Performing data processing,
7 telecommunication, insurance, or financial services. For purposes
8 of this subdivision, financial services shall only include
9 financial services provided by any financial institution subject to
10 tax under Chapter 77, article 38, or any person or entity licensed
11 by the Department of Banking and Finance or the Securities and
12 Exchange Commission;

13 ~~(e) The assembly,~~ (e) Assembly, fabrication, manufacture,
14 or processing of tangible personal property;

15 ~~(d) The administrative~~ (f) Administrative management of
16 any activities, including headquarter facilities relating to such
17 activities; or

18 ~~(e)~~ (g) Any combination of the activities listed in this
19 subsection.

20 (2) Qualified business does not include:

21 (a) Any business activity in which eighty percent or more
22 of the total sales are sales to the ultimate consumer of food
23 prepared for immediate consumption or are sales to the ultimate
24 consumer of tangible personal property which is not (a) assembled,
25 fabricated, manufactured, or processed by the taxpayer or (b) used

1 by the purchaser in any of the activities listed in subsection (1)
2 of this section; and

3 (b) Any casino.

4 Sec. 6. Section 77-27,195, Revised Statutes Supplement,
5 2005, is amended to read:

6 77-27,195 (1) The Tax Commissioner shall prepare a report
7 identifying the amount of investment in this state and the
8 number of equivalent jobs created by each taxpayer claiming a
9 credit pursuant to the Nebraska Advantage Rural Development Act.
10 The report shall include the amount of credits claimed in the
11 aggregate. The report shall be issued on or before March 15 of each
12 year beginning with March 15, 1988, through March 15, 2006, for all
13 credits allowed during the previous calendar year. The report shall
14 be issued on or before July 15 of each year beginning with July 15,
15 2007, for all credits allowed during the previous calendar year.

16 (2) Beginning with applications filed on or after January
17 1, 2006, except for livestock modernization or expansion projects,
18 the report shall provide information on project-specific total
19 incentives used every two years for each approved project and shall
20 disclose (a) the identity of the taxpayer, (b) the location of
21 the project, and (c) the total credits used and refunds approved
22 during the immediately preceding two years expressed as a single,
23 aggregated total. The incentive information required to be reported
24 under this subsection shall not be reported for the first year the
25 taxpayer attains the required employment and investment thresholds.

1 The information on first-year incentives used shall be combined
2 with and reported as part of the second year. Thereafter, the
3 information on incentives used for succeeding years shall be
4 reported for each project every two years containing information on
5 two years of credits used and refunds approved. The incentives used
6 shall include incentives which have been approved by the Department
7 of Revenue, but not necessarily received, during the previous two
8 calendar years.

9 (3) For livestock modernization or expansion projects,
10 the report shall disclose the identity of the taxpayer and the
11 total credits used and refunds approved during the preceding
12 calendar year.

13 ~~(3)~~ (4) No information shall be provided in the report
14 that is protected by state or federal confidentiality laws.

15 Sec. 7. Original sections 77-27,188.02 and 77-27,189,
16 Reissue Revised Statutes of Nebraska, and sections 77-27,187.01,
17 77-27,187.02, 77-27,188, and 77-27,195, Revised Statutes
18 Supplement, 2005, are repealed.